

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

**MV PUBLIC TRANSPORTATION, INC.**

**and**

**Case Nos.    29-CA-29530  
                  29-CA-29760**

**JOHN D. RUSSELL, AN INDIVIDUAL**

**and**

**Case No.:    29-CA-29544**

**LOCAL 1181-1061, AMALGAMATED TRANSIT  
UNION, AFL-CIO**

**and**

**ERIC BAUMWOLL, AN INDIVIDUAL**

**Case No.:    29-CA-29619**

**and**

**LOCAL 707, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, Party to the Contract**

**LOCAL 707, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS**

**and**

**Case No.    29-CB-13981**

**JOHN D. RUSSELL, AN INDIVIDUAL**

Date of Mailing: November 6, 2009

**AFFIDAVIT OF SERVICE OF: General Counsel's Opposition to Local 707,  
International Brotherhood of Teamsters' Motion for Summary Judgment and MV  
Public Transportation, Inc.'s Motions to Partially Dismiss the Complaint , or for  
Partial Summary Judgment**

I, the undersigned employee of the National Labor Relations Board being duly sworn, depose and say that on the date indicated above, I served the above-entitled document on the following persons at the addresses set forth below, in the manner set forth opposite each recipient:

Richard Pires  
MV Public Transportation, Inc.  
1957 Richmond Terrace  
Staten Island, NY 10314

By Federal Express/Overnight Mail

Daniel Pacheco  
Local 707, International Brotherhood of Teamsters  
14 Front Street, Suite 300  
Hempstead, NY 11550  
By Federal Express/Overnight Mail

Dominick Agate  
Local 1181-1061, Amalgamated Transit Union, AFL-CIO  
101-49 Woodhaven Blvd.  
Ozone Park, NY 11416  
By Federal Express/Overnight Mail

John Russell  
667 Quincy Avenue  
Staten Island, NY 10305  
By Federal Express/Overnight Mail

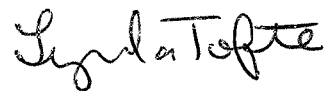
Eric Baumwoll  
63 Ebony Street  
Staten Island, NY 10306  
By Federal Express/Overnight Mail

H. Tor Christensen, Esq.  
Littler Mendelson, P.C.  
1150 17<sup>th</sup> Street, N.W., Suite 900  
Washington, D.C. 20036  
By Electronic Mail

George Kirschenbaum, Esq.  
Cary Kane, LLP  
1350 Broadway, Suite 815  
New York, NY 10018  
By Electronic Mail

Richard Brook, Esq.  
Meyer, Suozzi, English & Klein, P.C.  
1350 Broadway  
New York, NY 10018  
By Electronic Mail

Subscribed and sworn to me this 6<sup>th</sup> day of November, 2009



Designated Agent, National Labor Relations Board

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

**MV PUBLIC TRANSPORTATION, INC.**

**and**

**Case Nos.    29-CA-29530  
                  29-CA-29760**

**JOHN D. RUSSELL, AN INDIVIDUAL**

**and**

**Case No.:    29-CA-29544**

**LOCAL 1181-1061, AMALGAMATED TRANSIT  
UNION, AFL-CIO**

**and**

**ERIC BAUMWOLL, AN INDIVIDUAL**

**Case No.:    29-CA-29619**

**and**

**LOCAL 707, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, Party to the Contract**

**LOCAL 707, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS**

**and**

**Case No.    29-CB-13981**

**JOHN D. RUSSELL, AN INDIVIDUAL**

**GENERAL COUNSEL'S OPPOSITION TO LOCAL 707, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS' MOTION FOR SUMMARY JUDGMENT AND MV  
PUBLIC TRANSPORTATION, INC.'S MOTIONS TO PARTIALLY DISMISS THE  
COMPLAINT, OR FOR PARTIAL SUMMARY JUDGMENT**

The undersigned Counsel for the General Counsel hereby opposes Local 707, International Brotherhood of Teamsters' (Respondent 707) Motion for Summary Judgment, and MV Public Transportation, Inc.'s (Respondent MV) Motion to Partially Dismiss the Complaint, or for Partial Summary Judgment and its Second Motion to Dismiss or for Partial Summary Judgment, herein referred to as Respondents' Motions.

Respondents argue in support of their Motions that the Consolidated Complaint (the Complaint) allegations in this case relating to the alleged unlawful recognition, and its acceptance thereof, are barred by Section 10(b) of the Act. Respondent 707 further argues that an unfair labor practice complaint alleging unlawful recognition, and acceptance thereof, may not be filed in a case such as this where the employer posted a notice pursuant to In re. Dana Corp., 351 NLRB 434 (2007) ("Dana") which informed employees of a voluntary recognition, and no employee filed a petition seeking an election within the 45-day notice posting period.<sup>1</sup> Respondent MV also argues that its Motions should be granted because the parties complied with the Dana procedures, and because the parties complied with their own recognition agreement. Finally, Respondent MV argues that the Complaint's unlawful recognition allegations should be dismissed because the Regional Director has directed a deauthorization election in Case No. 29-UD-298 among the employees in the unit at issue in the Complaint.

For the reasons set forth below, Respondents' Motions should be dismissed in their entirety.

**I. Respondents' Motions for Summary Judgment and Dismissal of the Complaint Should be Denied As There Are Numerous Material Facts In Dispute and the Complaint States a Claim Upon Which Relief Can Be Granted**

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment shall be granted if the "pleadings, deposition, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Lake Charles Memorial Hospital, 240 NLRB 1330 (1979). Rule 12(b)(6) of the Federal Rules of Civil Procedure provides that a complaint may be dismissed where it

---

<sup>1</sup> It is not clear whether Respondent 707 is moving for summary judgment on the entire Complaint, or on the Complaint allegations set forth in the charge in Case No. 29-CB-13981. General Counsel will therefore respond to both positions.

fails to “state a claim upon which relief can be granted.” The Board has held that in deciding a motion to dismiss, a complaint’s factual allegations should be accepted as true and viewed in the light most favorable to the General Counsel. Local 917 International Brotherhood of Teamsters (Peerless Importers, Inc.), 345 NLRB 1010 fn. 2. (2005). As set forth below, there is no basis upon which to dismiss any portion of the Complaint or grant summary judgment.

The Complaint, issued on September 29, 2009, alleges that on September 12, 2008, Respondent MV unlawfully recognized Respondent 707 as the collective bargaining representative of its drivers in Staten Island, New York, in violation of Section 8(a)(2) of the Act, inasmuch as recognition was extended at a time when Respondent MV did not employ a representative segment of its ultimate employee complement and was not yet engaged in its normal business operations.<sup>2</sup> Likewise, the Complaint alleges that Respondent 707’s acceptance of such recognition was unlawful in violation of Section 8(b)(1)(A) of the Act.<sup>3</sup> The Complaint further alleges that on December 12, 2008, Respondent MV and Respondent 707 entered into a collective bargaining agreement containing Union Security and Check-off provisions covering its drivers, mechanics and utility workers in Staten Island, and that this clause has been maintained and enforced by the parties, in violation of Section 8(a)(3) and 8(b)(2) of the Act.

The Complaint also alleges that on October 20, 2008, Respondent MV unlawfully conditioned its employees’ employment on their agreeing to sign authorization cards for Respondent 707, in violation of 8(a)(1) and (2) of the Act. Finally, the Complaint alleges that on various dates in February and April of 2009, in violation of Section 8(a)(1) of the Act, Respondent MV: 1. kept employees engaged in union activity on behalf of another labor organization, Local 726, International Union of Journeymen and Allied Trades

---

<sup>2</sup> The Complaint is attached as Exhibit A.

(Local 726), under surveillance; 2. directed employees who signed authorization cards for Local 726 to ask for the return of those cards; 3. directed employees who signed authorization cards for Local 726 to give those cards to its manager Quinto Rapacioli; 4. threatened employees with unspecified reprisals; 5. spat at employees while they engaged in activities on behalf of Local 726; 6. threatened employees that it would call the police in order to interfere with such union activities; 7. directed its employees not to speak about Local 1181-1061, Amalgamated Transit Union, AFL-CIO (Local 1181) at its facility and 8. threatened to discharge employees if they spoke about Local 1181.

Respondents' position that there are no genuine issues as to any material facts raised by the Complaint and that the Complaint fails to state a claim under the Act, are clearly without merit. A review of Respondents' Answers to the Complaint demonstrates that there are numerous factual issues in dispute. Respondent MV admits that it granted recognition to Respondent 707 on September 12, 2008, and Respondent 707, likewise, admits that it accepted recognition from Respondent MV on that date.<sup>4</sup> Respondents also admit that on December 12, 2008, they entered into a collective bargaining agreement containing Union Security and Check-off provisions. However, Respondents both deny the Complaint allegations set forth in paragraphs 14 and 15, which form the basis for the alleged unlawful recognition -- that recognition occurred at a time when Respondent MV did not employ a representative segment of its ultimate employee complement, and when Respondent MV was not yet engaged in its normal operations of providing paratransit services at its Staten Island facilities. This allegation goes to the very core issue in this matter. Respondents also deny all other substantive Complaint allegations described above, and Respondents both assert as an affirmative defense

---

<sup>3</sup> The unlawful recognition allegations are contained in the charges in Case Nos. 29-CA-29530 and 29-CB-13981, filed by John Russell.

<sup>4</sup> Respondent 707's Answer is attached as Exhibit B; Respondent MV's Amended Answer is attached as Exhibit C.

that the Complaint is time-barred under the Act. By virtue of the numerous factual allegations which Respondents have denied, their argument that there are no fact issues here is not supported by the pleadings. Moreover, viewing the factual allegations set forth in the Complaint in the light most favorable to the General Counsel, there are no grounds on which to grant Respondent MV's motion to dismiss.

**II. There are Clear Fact Issues Raised by Respondents' Affirmative Defenses That the Unlawful Recognition Allegations are Time-Barred**

Respondents argue that the underlying charges alleging the unlawful recognition, and acceptance thereof, filed by Charging Party John Russell, are time barred as a matter of law because they were filed more than six months after Respondent MV and Respondent 707 entered into a recognition agreement on September 12, 2008.<sup>5</sup>

Respondents argue that 10(b) should begin to run as of September 12, 2008, yet, even if they are correct, there is a material fact in dispute, namely whether anyone other than the parties knew of the recognition as of that date. This alone dictates that the instant Motions be denied. Second, if it is concluded that 10(b) should begin to run from the time that *unit* employees had knowledge of the recognition, again, the date on which they gained such notice is an issue in dispute. It is the General Counsel's position that, at the earliest, unit employees had notice of the recognition on October 5, 2008, when the Dana notice was posted and, notably, within the 10(b) period.<sup>6</sup> However, when and where the Dana notice was posted is also a question of fact requiring a hearing and the presentation of evidence. Board law is clear that Section 10(b) of the Act, "does not begin to run until the Charging Party has received 'clear and unequivocal notice, either

---

<sup>5</sup> The violations alleged in the Complaint which took place between October 20, 2008, and April 30, 2009, clearly could not be challenged under Section 10(b) of the Act.

<sup>6</sup> As discussed, *infra*, it is the General Counsel's position that notice of the recognition does not equate to notice of the violation, the latter of which is when 10(b) begins to run.

actual or constructive' of the violation." Dedicated Services, Inc., 352 NLRB No. 93 at 11 (2008) (citing Broadway Volkswagen, 342 NLRB 1244, 1246 (2004)). In an unlawful recognition case, the 10(b) period does not begin running from the date of recognition without evidence that the Charging Party had clear and unequivocal notice, either actual or constructive, of the violation at that time.

In this case, Charging Party John Russell had no way of knowing of the recognition at the time it occurred on September 12, 2008, as he did not begin working for Respondent MV until October 20, 2008. The Board in Dedicated found that the 10(b) period in that case did not begin to run at the time of the unlawful recognition, but rather it ran from the time that the charging party union was informed of the recognition by an employee. The decision in Dedicated does not distinguish between the application of 10(b) to a labor organization as opposed to an individual charging party. Thus, based on Dedicated, there is no reason to deny the Charging Party here the same opportunity that the union was granted in Dedicated -- to file an unfair labor practice charge within six months of the time when he learned of the alleged unlawful recognition.

Respondents argue that the holding in Dedicated Services, Inc. -- that 10(b) runs from the time the charging party had notice of an unlawful recognition -- is inapplicable to an individually-filed charge and that the Board did not intend to grant an individual Charging Party, as opposed to a union, the same latitude in tolling Section 10(b) of the Act. Respondents offer no support for such an inconsistent application of Board law.<sup>7</sup>

---

<sup>7</sup> The cases Respondent MV cites are inapposite. NLRB v. Triple Maintenance, Inc., 219 F.3d 1147 (10<sup>th</sup> Cir. 2000) involved an employer's challenge to a union's majority status more than six months after the employer recognized the union as the collective bargaining representative of its employees. In discussing the 10(b) issue, the Tenth Circuit noted that "a time limitation is unique to both the employer and the employee," and that it does not run until the parties have notice of an alleged unlawful recognition. The Tenth Circuit further noted that the 10(b) period could not begin to run in such a case until, at the earliest, an employee was hired or "otherwise had notice of the recognition." *Id.* at fn.7. The case does not hold that employees in an unlawful recognition case have six months to file a charge from the date the first employee knew of an unlawful recognition, as Respondent MV states. Respondents both cite to Texas World Serv. Co., 928 F.2d 1426, 1427 (5<sup>th</sup> Cir. 1991), where the Fifth Circuit held that a charge was not time barred

Neither the Act nor Board law distinguishes between the rights of individuals, as opposed to unions or employers, in the application of Section 10(b). There is thus no basis to summarily dismiss the unlawful recognition allegations without a full examination of the evidence relating to the 10(b) issue.

Even if it is ultimately concluded that the 10(b) period does not begin running in this case from the commencement of Russell's employment on October 20, 2008, the unlawful recognition charges are still not time barred. First, the unit employees had no way of knowing that the September 12, 2008, recognition violated the Act until a representative segment of the unit was employed, and employees were put on notice that the earlier recognition took place at a time when Respondent MV did not employ a representative segment of its ultimate employee complement. Thus, only when a representative segment was employed, after Russell began working for Respondent MV, could employees have known the September 12<sup>th</sup> recognition was unlawful. As stated by the Board in Leach Corp., 312 NLRB 990 (1993), enfd., 54 F.3d 802 (D.C. Cir. 1995), "the running of the limitations period can begin only when the unfair practice *occurs*." Id. at 991 (emphasis added). In Leach, the violation occurred when the employer's workforce in a one location grew to include a substantial percentage of the employer's union represented employees working at another location which was closing, and the employer refused to recognize the union. It was at that point that the union in Leach was put on notice of the facts supporting a ripe unfair labor practice charge. Id. Here, the

---

where no one could or would have challenged a previous unlawful recognition until the unfair labor practice accrued, when employees were hired. Texas World Serv. Co. does not hold that the 10(b) period begins as a rule in an unlawful recognition case when an employer first hires employees. Respondent MV's reliance on R.J.E. Leasing Corp., 262 NLRB 373, 381 (1982), is similarly misplaced. In that case, the employer argued that its unlawful pre-hire agreement was executed more than six months prior to the filing of the charges, and thus 8(a)(2) charges should be dismissed. The Board held that the charges were not barred because employees only first learned of the recognition within the 10(b) period. The Board did not hold, as Respondent MV suggests, that the 10(b) period started running against all parties when employees in general became aware of the recognition, or that a later filed charge by an employee would be time-barred.

unit employees employed at the time of the September 12<sup>th</sup> recognition could not have been on notice of the alleged unfair labor practice -- that the recognition occurred at a time when Respondent MV did not employ a representative complement of employees -- until Respondent MV's employee complement grew from the 22 employees employed at the time of recognition, to a representative complement of employees hired after the employment of Russell on October 20, 2008.

Thus, an ALJ must examine evidence at a hearing on the question of when the Charging Party, or the unit in general, had clear and unequivocal notice of the violation. This is a fact question which can only be resolved at a hearing.

Respondents argue that the unlawful recognition allegation is time barred even if 10(b) begins to run after the recognition took place, because certain documents were posted at Respondent MV's facility purportedly announcing the recognition prior to the posting of the Dana notice. According to Respondent 707, Respondent MV posted a letter dated September 18, 2008, from Region 29 concerning the voluntary recognition some time after September 18th. Respondent MV states that employees were aware of the recognition when the card check certification was posted. The General Counsel disputes these assertions, and is prepared to introduce evidence at a hearing in this regard. This factual dispute, again, underscores the fact that summary judgment or dismissal of the Complaint is wholly inappropriate.<sup>8</sup>

Whether the 10(b) period begins to run upon the posting of the Dana notice (October 5, 2008), Russell's date of hire (October 20, 2008), or upon the date on which a representative segment of the unit was actually employed, such that employees would

---

<sup>8</sup> Respondents also argue that employees in general should be charged with notice of the recognition based upon the NLRB's publication of VR cases in an Excel file publicly accessible through its website. Regardless of whether employees can really be charged with notice based upon such publication, which General Counsel strongly contests, the website does not indicate when information concerning the filing of the VR case was first posted. Thus, without more, this

have reason to believe the earlier recognition was unlawful, Russell's charge in this case is timely.<sup>9</sup>

III. **Respondents Argument that Compliance with the Dana Procedures Precludes the Filing of Unfair Labor Practice Charges Is Without Merit**

Respondents also rely on their compliance with procedures set forth in Dana in defense to the unlawful recognition allegations. Respondent 707 argues that the recognition at issue here cannot be challenged because "pursuant to the rules established by the Board in Dana, Local 707's status as the unit employees' representative should not be subject to challenge either through a representation case or this unfair labor practice case." Respondent 707 Motion at 5. There is no support for this argument. The Board's decision in Dana provides that where an employer voluntarily recognizes a union, in order for such recognition to bar the filing of other representation case petitions, a Board-issued notice must be posted by the employer advising employees of the recognition and providing them with 45 days within which to file such a representation case petition. If no petition is filed during the 45 day period, the parties are entitled to a recognition bar for a reasonable period of time. Dana at 441. Dana decidedly does not preclude the filing of an unfair labor practice charge alleging that the voluntary recognition was unlawful simply because the Dana procedures were followed. First, the Board explicitly noted in Dana that no Section 8(a)(2) charge had been filed in that case. Id. at 436. Second, the Board was quite clear there when it stated, "the issue before us is limited to whether an employer's voluntary recognition of a

---

publication says nothing about when the public could have learned of the VR case had they checked the NLRB website.

<sup>9</sup> Respondents both point out in their Motions that the Region dismissed the portion of the charge in Case No. 29-CA-26544, filed by Local 1181, which alleges that Respondent MV unlawfully recognized Respondent 707. Each argues that the Region concluded that 1181's charge was time barred. The dismissal of this portion of Local 1181's charge by the Region has no bearing

union should bar a decertification or rival union election petition for some period of time thereafter.” Id. at 437. Respondents offer no support for this theory, as there is none. This argument is wholly without merit and should be rejected.

In support of its claims that that it did not unlawfully recognize Respondent 707, Respondent MV also argues that it complied with the terms of its recognition agreement with Respondent 707. The fact that Respondent MV may have complied with its own recognition agreement with Respondent 707 has no bearing on whether the recognition itself violated the Act.

**IV. The Complaint Should Not Be Dismissed As a Result of the Direction of a Deauthorization Election**

On October 22, 2009, the Regional Director directed a deauthorization election in Case No. 29-UD-298.<sup>10</sup> Respondent MV argues that it is improper to hold such an election while the Complaint is pending, and that the Complaint should therefore be dismissed. In the UD proceeding, Respondent MV argued to the Region that the UD election should not be held while the Complaint was pending, and therefore that the UD petition should be held in abeyance until the Complaint allegations were resolved. As stated by the Regional Director in his October 22, 2009, correspondence to the parties, it is proper for a UD petition to be processed while an unfair labor practice complaint is pending.<sup>11</sup> Employees should not be forced to wait until the resolution of unfair labor practice charges challenging the collective bargaining relationship and the lawfulness of the Respondents’ collective bargaining agreement -- which could involve a litigation process of a year or more -- to proceed to a deauthorization election. Nor should

---

on the charges at issue here. The Region issued a “short-form” letter dismissing this portion of the charge, which provides no reason for the dismissal.

<sup>10</sup> The election is scheduled for November 12, 2009. The hearing in Case Nos. 29-CA-29530, 29-CA-29760, 29-CA-29544, 29-CA-29619 and 29-CB-13981 is scheduled for December 8, 2009.

<sup>11</sup> The Regional Director’s October 22, 2009, letter is attached as Exhibit D.

employees be forced to choose between exercising their right to file an unfair labor practice charge and their right to seek a deauthorization election.

Moreover, unlike RC and RD petitions, a question concerning representation is not raised in a deauthorization election and the Agency's "blocking" policy does not apply. If employees vote to deauthorize Respondent 707 from compelling dues deductions, the unit employees' representation status is unchanged, and the current collective bargaining agreement would remain in effect, unless and until the Board found a violation based on the allegations in the Complaint.

Respondent MV relies on the Board's decision in Parks Food Service, 235 NLRB 1410 (1978) in support of its position that the UD election should not go forward while the Complaint is pending, or that the Complaint should be dismissed if the UD election is held prior to the resolution of the charges. Respondent MV also cited this case in its letter to the Region requesting reconsideration of the direction of the UD election. In his November 2, 2009, letter to Respondent MV, the Regional Director distinguished Parks from the facts at issue here.<sup>12</sup> In short, in Parks, the Board found that a UD election should not have been held in a case where, following the filing of a UD petition, the employer posted a notice to employees advising them that it would not enforce the union security clause in the parties' collective bargaining agreement until the UD election was held. A complaint issued, alleging that the employer violated Section 8(a)(5) of the Act by unilaterally rescinding the union security clause, and the UD election was conducted. The union filed an objection and argued that the election should not have been held under such circumstances, and the Board agreed that the employer's conduct prevented employees from making a free choice as to whether to retain the union security clause. The Board did not hold that as a general rule UD elections should not be held while

---

<sup>12</sup> The Regional Director's November 2, 2009, letter is attached as Exhibit E.

unfair labor practice charges are pending, nor did the Board extend this holding to any other set of facts.

The facts at issue in the instant case are quite distinct from those in Parks. Here, the unfair labor practices alleged in the Complaint refer to a *benefit* unlawfully bestowed upon Respondent 707, as opposed to the employer's conduct in Parks which served to undercut employee support for the incumbent union. Further, the employer's unfair labor practice in Parks was central to the choice which the employees made when voting in the UD election -- whether to retain the union security clause. By rescinding the clause prior to the election, the employer clearly interfered with employees' free choice. Holding the UD in abeyance under the facts at issue here, or dismissing the Complaint as a result of the processing of the UD petition, would allow Respondents to continue to benefit as a result of their own allegedly unlawful conduct.

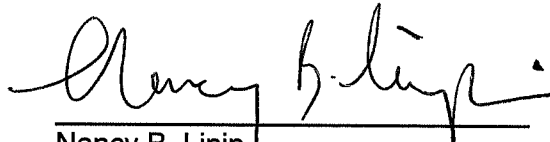
Respondent MV's argument that the Complaint will interfere with employee free choice represents a fundamental misunderstanding of the proceedings and of the bifurcation of the Agency. Respondent MV states that "[employees will be asked to vote in a Board supervised election, on whether to pay dues to their union -- a union which the Board itself is challenging as unlawfully recognized." Respondent MV's Motion at 6. First, the ballot in a UD election asks employees if they wish to rescind the authority of their union to compel union membership as a condition of employment pursuant to a collectively bargained provision, not merely on whether they should pay their union dues. Second, Respondent MV appears to misunderstand that it is not the Board which is challenging the recognition; it is the General Counsel which, while prepared to prove the alleged violations by a preponderance of the credible evidence, makes no presumptions about whether an ALJ, or ultimately the Board, will agree. The election is indeed administered under the supervision of the Regional Director, but in his capacity as an agent of the Board, not the General Counsel. To argue that the Director cannot perform

both Board and General Counsel functions concurrently is specious and must be rejected. If the General Counsel prevails in the unfair labor practice proceeding, the cessation of dues paid by any employee choosing to revoke membership will, in effect, constitute part of the remedy that will flow from such a decision. If the Respondents prevail then clearly the conduct of the election is the proper exercise of employee rights under Section 9(e)(1) of the Act.

Based on the above, Counsel for the General Counsel requests that Respondents' Motions be denied and that the evidence be presented to an Administrative Law Judge to resolve the factual and legal matters at issue.

Dated November 6, 2009, in Brooklyn, New York.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nancy B. Lipin", written over a horizontal line.

Nancy B. Lipin  
Counsel for the General Counsel  
National Labor Relations Board  
Region 29  
Two MetroTech Center, 5<sup>th</sup> Flr.  
Brooklyn, New York 11201

# EXHIBIT A

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

**MV PUBLIC TRANSPORTATION, INC.**

**and**

**Case Nos.    29-CA-29530  
                  29-CA-29760**

**JOHN D. RUSSELL, AN INDIVIDUAL**

**and**

**Case No.:    29-CA-29544**

**LOCAL 1181-1061, AMALGAMATED TRANSIT  
UNION, AFL-CIO**

**and**

**ERIC BAUMWOLL, AN INDIVIDUAL**

**Case No.:    29-CA-29619**

**and**

**LOCAL 707, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, Party to the Contract**

**LOCAL 707 INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS**

**and**

**Case No.    29-CB-13981**

**JOHN D. RUSSELL, AN INDIVIDUAL**

**ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT  
AND NOTICE OF HEARING**

John D. Russell, an Individual, herein called Russell, in Case Nos. 29-CA-29530, 29-CA-29760; Eric Baumwoll, an Individual, herein called Baumwoll, in Case No. 29-CA-29619; and, Local 1181-1061, Amalgamated Transit Union, AFL-CIO, herein called Local 1181, in Case No. 29-CA-29544, have each charged that MV Public Transportation, Inc., herein called Respondent MV, has engaged in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations

Act, as amended, 29 U.S.C. Section 151, et. seq., herein called the Act. Russell has also charged, in Case No. 29-CB-13981, that Local 707, International Brotherhood of Teamsters, herein called Respondent Teamsters, has been engaging in unfair labor practices affecting commerce as set forth in the Act. Based thereon, and in order to avoid unnecessary costs or delay, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.33 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, **ORDERS** that these cases be consolidated.

These cases having been consolidated, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Order Consolidating Cases, Consolidated Complaint and Notice of Hearing and alleges as follows:

1. (a) The charge in Case No. 29-CA-29530 was filed by Russell on March 31, 2009, and served by regular mail upon Respondent MV on April 2, 2009.

(b) The charge in Case No. 29-CB-13981 was filed by Russell on March 31, 2009, and served by regular mail upon Respondent Teamsters on April 2, 2009.

(c) The charge in Case No. 29-CA-29760 was filed by Russell on August 7, 2009, and served by regular mail upon Respondent MV on August 19, 2009.

(d) The charge in Case No. 29-CA-29544 was filed by Local 1181 on April 9, 2009, and served by regular mail upon Respondent MV on April 14, 2009;

(e) The first amended charge in Case No. 29-CA-29544 was filed by Local 1181 on June 9, 2009, and served by regular mail upon Respondent MV on June 11, 2009.

(f) The charge in Case No. 29-CA-29619 was filed by Baumwoll on May 22, 2009, and served by regular mail upon Respondent MV on May 27, 2009.

2. At all material times, Respondent MV, a domestic corporation, with its principal office and place of business located at 1957 Richmond Terrace, Staten Island, New York, herein called the Richmond Terrace facility, and with other locations in Staten Island, New York, including places of business located at 40 LaSalle Street, herein called the LaSalle Street facility, and 900 South Avenue, herein called the South Avenue facility, has been engaged in providing paratransit services for the City of New York, and other corporate clientele.

3. During the past year, which period is representative of its annual operations generally, Respondent MV, in the course and conduct of its operations described above in paragraph 2:

- (a) derived gross annual revenues in excess of \$250,000; and,
- (b) purchased and received at its Staten Island facilities, goods and materials valued in excess of \$5,000 directly from suppliers located outside the State of New York.

4. At all material times, Respondent MV has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

5. (a) At all material times, Respondent Teamsters has been a labor organization within the meaning of Section 2(5) of the Act.

(b) At all material times, Local 1181 has been a labor organization within the meaning of Section 2(5) of the Act.

(c) At all material times, Local 726, International Union of Journeymen and Allied Trades, herein called Local 726, has been a labor organization within the meaning of Section 2(5) of the Act.

6. At all material times, the following individuals employed by Respondent MV have held the positions listed next to their names and have been supervisors of

Respondent MV within the meaning of Section 2(11) of the Act and/or agents acting on its behalf:

Quinto Rapacioli

General Manager

John Duncan

Regional Manager

7. On or about September 12, 2008, Respondent MV granted recognition to Respondent Teamsters as the exclusive collective bargaining representative of Respondent MV's employees in the following Unit, herein called the Unit:

All full-time and regular part-time drivers in Staten Island, New York, excluding warehouse employees, mechanics and similar maintenance employees, office clerical employees, managerial employees, guards and supervisors as defined by the National Labor Relations Act.

8. On or about September 12, 2008, Respondent Teamsters accepted recognition from Respondent MV as the exclusive collective bargaining representative of the Unit.

9. Respondent MV engaged in the conduct described above in paragraph 7, even though at the time, Respondent MV:

(a) did not employ a representative segment of its ultimate employee complement; and,

(b) was not yet engaged in its normal operations of providing paratransit services at its Staten Island facilities.

10. Respondent Teamsters engaged in the conduct described above in paragraph 8, even though at the time, Respondent MV:

(a) did not employ a representative segment of its ultimate employee complement; and,

(b) was not yet engaged in its normal operations of providing paratransit services at its Staten Island facilities.

11. On or about October 20, 2008, Respondent MV, by its agent Rapacioli, at the South Avenue facility, conditioned its employees' employment on their agreeing to sign authorization cards on behalf of Respondent Teamsters.

12. On or about December 12, 2008, Respondent MV entered into, and since then has maintained and enforced, a collective bargaining agreement with Respondent Teamsters, as the exclusive collective bargaining representative of Respondent MV's employees in the following modified unit, herein called the Contract Unit:

Full-time, part-time and casual drivers, mechanics and utility workers working under any Contract between the Company and New York City Transit Authority excluding office clerical employees, mechanics, utility workers, professional employees, road supervisors, dispatchers, guards and supervisors as defined in the Act.

13. Since on or about December 12, 2008, Respondent MV and Respondent Teamsters have maintained and enforced the collective bargaining agreement referred to above in paragraph 12, and which contains Union Security and Check-Off provisions in Article 3, Sections 3.2 and 3.3, respectively, attached hereto as Exhibit A.

14. Respondent MV engaged in the conduct described above in paragraphs 12 and 13 even though it did not employ a representative segment of its employee complement, and was not yet engaged in its normal operations when it conferred recognition upon Respondent Teamsters, described above in paragraphs 7 and 9.

15. Respondent Teamsters engaged in the conduct described above in paragraphs 12 and 13 even though Respondent MV did not employ a representative segment of its employee complement, and was not yet engaged in its normal operations when Respondent Teamsters accepted recognition from Respondent MV, described above in paragraphs 8 and 10.

16. In or around mid to late February 2009, Respondent MV, by its agent, Duncan, at the LaSalle Street facility, threatened its employees with job loss unless they signed a dues check-off form on behalf of Respondent Teamsters.

17. On or about February 9, 2009, Respondent MV, by its agent, Rapacioli, outside the LaSalle Street facility, engaged in the following conduct:

(a) kept employees engaged in activities in support of Local 726 under surveillance by taking photographs of them;

(b) directed employees who signed authorization cards on behalf of Local 726 to ask for the return of those cards;

(c) directed employees who signed authorization cards on behalf of Local 726 to give those cards to Rapacioli; and,

(d) threatened employees with unspecified reprisals because of their activities on behalf of Local 726.

18. In or around the second week of February 2009, Respondent MV, by its agent, Rapacioli, outside the LaSalle Street facility, engaged in the following conduct:

(a) spat at employees while they engaged in activities in support of Local 726;

(b) threatened employees it would call police in order to interfere with activities, referred to in subparagraph (a); and,

(c) threatened employees with unspecified reprisals because of their activities on behalf of Local 726.

19. On or about April 30, 2009, Respondent MV, by its agent, Rapacioli, at the South Avenue facility, engaged in the following conduct:

(a) directed its employees not to speak about Local 1181 at its facility; and,

(b) threatened to discharge its employees if they spoke about Local 1181.

20. By the conduct described above in paragraphs 16 through 19, Respondent MV has been interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

21. By engaging in the conduct described above in paragraphs 7, 9 and 11 through 14 and 16, Respondent MV has encouraged its employees to join and support Respondent Teamsters, even though Respondent Teamsters did not represent an uncoerced majority of the Unit.

22. By engaging in the conduct described above in paragraphs 8, 10, 12, 13 and 15, Respondent Teamsters has caused Respondent MV to encourage its employees to join Respondent Teamsters, even though Respondent Teamsters, at all material times, did not represent an uncoerced majority of the Unit.

23. By the conduct described above in paragraphs 7, 9, 11 through 14 and 16, Respondent MV has been rendering unlawful assistance and support to a labor organization in violation of Section 8(a)(1) and (2) of the Act.

24. By the conduct described above in paragraphs 11, 13 and 14, Respondent MV has been encouraging their employees to join, support or assist Respondent Teamsters thereby encouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

25. By the conduct described above in paragraphs 8, 10, 12, 13 and 15, Respondent Teamsters has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(b)(1)(A) of the Act.

26. By the conduct described above in paragraphs 13 through 15, Respondent Teamsters has attempted to cause, and has caused, Respondent MV to

discriminate against its employees in violation of Section 8(a)(3) of the Act, in violation of Section 8(b)(2) of the Act.

25. The unfair labor practices of Respondent MV and Respondent Teamsters, described above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

**WHEREFORE**, as part of the remedy for Respondents' unfair labor practices alleged above, the General Counsel seeks an Order which includes the standard make whole remedy, but that in addition thereto, that interest on any monetary compensation owed to employees be computed on a compounded quarterly basis. The General Counsel further seeks an Order requiring that Respondents, in addition to any standard notice-posting remedy ordered, post any notice to employees and/or members via its internet, e-mail, or other electronic procedures. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

#### **ANSWER REQUIREMENT**

**RESPONDENT MV and RESPONDENT TEAMSTERS ARE NOTIFIED** that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, they must file an Answer to the Consolidated Complaint. The Answer must be **received by this office on or before, October 13, 2009, or postmarked on or before October 9, 2009.** Respondents should file an original and four (4) copies of the Answer with this office and serve a copy of the Answer on each of the other parties. **Any request for an extension of time to file an answer must, pursuant to Section 102.111(b) of the Board's Rules and Regulations, be received by close of business on October 13, 2009. The request should be in writing and addressed to the Regional Director of Region 29.**

An Answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website

at <http://www.nlr.gov>, click on **E-Gov**, then click on **the E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than two (2) hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the Answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an Answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If an Answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer needs to be transmitted to the Regional Office. However, if the electronic version of an Answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such Answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the Answer on each of the other parties must still be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The Answer may **not** be filed by facsimile transmission. See Section 102.114(g) of the Board's Rules and Regulations. If no Answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Consolidated Complaint are true.

#### **NOTICE OF HEARING**

**PLEASE TAKE NOTICE THAT** on **November 17, 2009**, at 9:30 a.m., a hearing will be conducted at Two MetroTech Center, Suite 5100, Brooklyn, New York, before an

administrative law judge of the National Labor Relations Board. At the hearing, Respondents and any other party to this proceeding has the right to appear and present testimony regarding the allegations in this Consolidated Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Brooklyn, New York, September 30, 2009.

A handwritten signature in black ink, appearing to read "Al Blyer", is written over a horizontal line.

Alvin Blyer, Regional Director  
National Labor Relations Board  
Region 29  
Two MetroTech Center, Suite 5100  
Brooklyn, New York 11201

# EXHIBIT B

-----X	
MV PUBLIC TRANSPORTATION, INC.	:
and	:
JOHN D. RUSSELL, AN INDIVIDUAL	: Case Nos. 29-CA-29530 29-CA-29760
and	:
LOCAL 1181-1061, AMALGAMATED TRANSIT UNION, AFL-CIO	: Case No. 29-CA-29544
and	:
ERIC BAUMWOLL, AN INDIVIDUAL	Case No. 29-CA-29619
and	
LOCAL 707, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, Party to the Contract	
LOCAL 707, INTERNATIONAL BROTHERHOOD OF TEAMSTERS	
and	Case No. 29-CB-13981
JOHN D. RUSSELL, AN INDIVIDUAL	

18436-1

and Notice of Hearing (hereinafter the "Complaint") issued by the Regional Director of Region 29, National Labor Relations Board and dated as of September 30, 2009.

The introductory paragraphs contained on pages 1 and 2 of the Complaint contain no legal allegations and therefore do not require an answer. To the extent that a response is required to those paragraphs, Local 707 hereby denies them.

1. (a) Local 707 lacks information sufficient to form a belief as to the allegations in paragraph 1 (a) and therefore denies them.

(b) Local 707 admits the allegations contained in paragraph 1 (b).

(c) Local 707 lacks information sufficient to form a belief as to the allegations in paragraph 1 (c) and therefore denies them.

(d) Local 707 lacks information sufficient to form a belief as to the allegations in paragraph 1 (d) and therefore denies them.

(e) Local 707 lacks information sufficient to form a belief as to the allegations in paragraph 1 (e) and therefore denies them.

(f) Local 707 lacks information sufficient to form a belief as to the allegations in paragraph 1 (f) and therefore denies them.

2. Upon information and belief, Local 707 admits the allegations contained in paragraph 2.

3. Local 707 lacks information sufficient to form a belief as to the allegations in paragraph 3 (a) and (b) and therefore denies them.

4. Upon information and belief, Local 707 admits the allegations contained in paragraph 4.

5. Local 707 admits the allegation contained in paragraph 5 (a), (b) and (c).

6. Local 707 admits the allegation contained in paragraph 6 concerning Quinto Rapacioli. Local 707 lacks information sufficient to form a belief as to the remaining allegations in paragraph 6 and therefore denies them.

7. Local 707 admits the allegations contained in paragraph 7.

8. Local 707 admits the allegations contained in paragraph 8.

9. Local 707 denies the allegations contained in paragraph 9 (a) and (b).

10. Local 707 denies the allegations contained in paragraph 10 (a) and (b).

11. Local 707 lacks information sufficient to form a belief as to the allegations in paragraph 11 and therefore denies them.

12. Local 707 admits the allegations contained in paragraph 12.

13. Local 707 admits the allegations contained in paragraph 13.

14. Local 707 denies the allegations contained in paragraph 14.

15. Local 707 denies the allegations contained in paragraph 15.

16. Local 707 lacks information sufficient to form a belief as to the allegations in paragraph 16 and therefore denies them.

17. Local 707 lacks information sufficient to form a belief as to the allegations in paragraph 17 (a), (b), (c) and (d) and therefore denies them.

18. Local 707 lacks information sufficient to form a belief as to the allegations in paragraph 18 (a), (b), and (c) and therefore denies them.

19. Local 707 lacks information sufficient to form a belief as to the allegations in paragraph 19 (a) and (b) and therefore denies them.

20. Local 707 lacks information sufficient to form a belief as to the allegations in paragraph 20 and therefore denies them.

21. Local 707 denies the allegations contained in paragraph 21.
22. Local 707 denies the allegations contained in paragraph 22.
23. Local 707 denies the allegations contained in paragraph 23.
24. Local 707 denies the allegations contained in paragraph 24.
25. Local 707 denies the allegations contained in paragraph 25.
26. Local 707 denies the allegations contained in paragraph 26.
27. Local 707 denies the allegations contained in the 27th numbered paragraph of the Complaint which paragraph appears to be numbered incorrectly as "25."
28. Local 707 denies each and every allegation contained in the Complaint that it has not specifically admitted in this Answer.
29. Local 707 specifically avers that neither the General Counsel nor the Charging Parties are entitled to any of the relief sought in the Complaint.

#### **AS AND FOR A FIRST DEFENSE**

The complaint fails to state a claim upon which relief may be granted.

#### **AS AND FOR A SECOND DEFENSE**

The allegations in the Complaint are barred, by the statute of limitations contained in Section 10 (b) of the Act.

#### **AS AND FOR A THIRD DEFENSE**

The Complaint is barred by the doctrine of estoppel, waiver, and/or unclean hands.

#### **AS AND FOR A FOURTH DEFENSE**

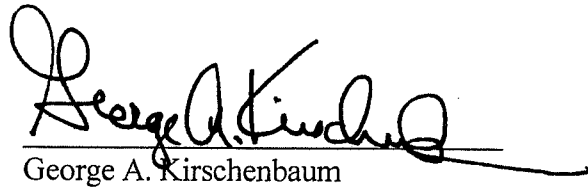
Local 707 did not commit any violations of the Act.

WHEREFORE, having fully answered the allegations of the Complaint, Local 707 respectfully submits that the Complaint should be dismissed in its entirety.

Dated: October , 2009  
New York, NY

CARY KANE LLP

By:

  
George A. Kirschenbaum

Attorneys for Local 707, International  
Brotherhood of Teamsters  
1350 Broadway, Suite 815  
New York, NY 10018  
(212) 868-6300  
(212) 868-6302 (FAX)

**CERTIFICATE OF SERVICE**

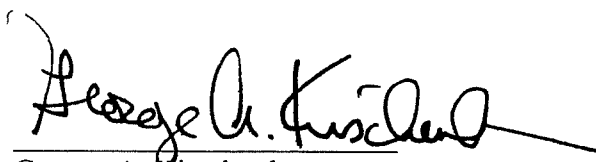
I hereby certify that on this 12<sup>th</sup> day of October, 2009, a copy of the foregoing Answer and Defenses of Local 707, International Brotherhood of Teamsters to the Order Consolidating Cases, Consolidated Complaint And Notice of Hearing was served upon the below listed individuals by Overnight Delivery Service:

H. Tor Christensen, Esq.  
Littler Mendelson, P.C.  
1150 17<sup>th</sup> Street, N.W. Suite 900  
Washington, DC 20036

Richard Brook, Esq.  
Meyer, Suozzi, English & Klein, P.C.  
1350 Broadway  
New York, NY 10018

John D. Russell  
667 Quincy Avenue  
Staten Island, NY 10305

Eric Baumwoll  
63 Ebony Street  
Staten Island, NY 10306

  
George A. Kirschenbaum

# EXHIBIT C

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

**MV PUBLIC TRANSPORTATION, INC.**

**and**

**Case Nos.    29-CA-29530  
                  29-CA-29760**

**JOHN D. RUSSELL, AN INDIVIDUAL**

**and**

**Case No.     29-CA-29544**

**LOCAL 1181-1061, AMALGAMATED TRANSIT  
UNION, AFL-CIO**

**and**

**Case No.     29-CA-29619**

**LOCAL 707, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, Party to the Contract**

**LOCAL 707, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS**

**and**

**Case No.     29-CB-13981**

**JOHN D. RUSSELL, AN INDIVIDUAL**

**AMENDED ANSWER OF RESPONDENT  
MV PUBLIC TRANSPORTATION, INC.**

Respondent MV Public Transportation, Inc. ("Respondent"), through counsel and pursuant to §§102.20 and 102.21 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, for its Answer to the Complaint admits, denies and avers as follows:

**ANSWER AND FIRST DEFENSE**

- 1(a) Respondent denies the allegations set forth in Paragraph 1(a) of the Complaint because Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations made therein regarding the dates that the referenced unfair labor

practice charge was filed or served. Respondent avers that it received a copy of the subject unfair labor practice charge on or about the date referenced in Paragraph 1(a) of the Complaint.

- (b) Respondent denies the allegations set forth in Paragraph 1(b) of the Complaint because Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations made therein regarding the dates that the referenced unfair labor practice charge was filed or served.
- (c) Respondent denies the allegations set forth in Paragraph 1(c) of the Complaint because Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations made therein regarding the dates that the referenced unfair labor practice charge was filed or served. Respondent avers that it received a copy of the subject unfair labor practice charge on or about the date referenced in Paragraph 1(c) of the Complaint.
- (d) Respondent denies the allegations set forth in Paragraph 1(d) of the Complaint because Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations made therein regarding the dates that the referenced unfair labor practice charge was filed or served. Respondent avers that it received a copy of the subject unfair labor practice charge on or about the date referenced in Paragraph 1(d) of the Complaint.
- (e) Respondent denies the allegations set forth in Paragraph 1(e) of the Complaint because Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations made therein regarding the dates that the referenced unfair labor practice charge was filed or served. Respondent avers that it received a copy of the

subject unfair labor practice charge on or about the date referenced in Paragraph 1(e) of the Complaint.

- (f) Respondent denies the allegations set forth in Paragraph 1(f) of the Complaint because Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations made therein regarding the dates that the referenced unfair labor practice charge was filed or served. Respondent avers that it received a copy of the subject unfair labor practice charge on or about the date referenced in Paragraph 1(f) of the Complaint.
- 2. Respondent admits the allegations contained in Paragraph 2 of the Complaint, except that it avers the LaSalle Street Facility and the South Avenue facility are no longer utilized by Respondent as of May 30, 2009
- 3(a) Respondent admits the allegations contained in Paragraph 3(a) of the Complaint.
- (b) Respondent admits the allegations contained in Paragraph 3(b) of the Complaint.
- 4. Respondent admits the allegations contained in Paragraph 4 of the Complaint.
- 5(a) Respondent admits the allegations set forth in Paragraph 5(a) of the Complaint because upon information and belief, Respondent Teamsters is a labor organization under the meaning of Section 2(5) of the Act.
- 5(b) Respondent admits the allegations set forth in Paragraph 5(b) of the Complaint because upon information and belief, Respondent Local 1181 is a labor organization under the meaning of Section 2(5) of the Act.
- 5(c) Respondent denies the allegations set forth in Paragraph 5(c) of the Complaint because upon information and belief, Respondent Local 726 is a labor organization under the meaning of Section 2(5) of the Act.

6. Respondent admits the allegations contained in Paragraph 6 of the Complaint, except that John Duncan was employed as the Operations Manager at the time, and is no longer employed by the Respondent.
7. Respondent admits the allegations contained in Paragraph 7 of the Complaint.
8. Respondent admits the allegations contained in Paragraph 8 of the Complaint.
- 9(a) Respondent denies the allegations contained in Paragraph 9(a) of the Complaint.
- (b) Respondent denies the allegations contained in Paragraph 9(b) of the Complaint.
- 10(a) Respondent denies the allegations contained in Paragraph 10(a) of the Complaint.
- (b) Respondent denies the allegations contained in Paragraph 10(b) of the Complaint.
11. Respondent denies the allegations contained in Paragraph 11 of the Complaint.
12. Respondent admits the allegations contained in Paragraph 12 of the Complaint.
13. Respondent admits the allegations contained in Paragraph 13 of the Complaint.
14. Respondent denies the allegations contained in Paragraph 14 of the Complaint.
15. Respondent denies the allegations contained in Paragraph 15 of the Complaint.
16. Respondent denies the allegations contained in Paragraph 16 of the Complaint, but avers that upon information and belief, Operations Manager John Duncan informed employees that in accordance with the terms of the Collective Bargaining Agreement with Teamsters Local 707, bargaining unit members were required to be members of the Union.
- 17(a) Respondent denies the allegations contained in Paragraph 17(a) of the Complaint.
- (b) Respondent denies the allegations contained in Paragraph 17(b) of the Complaint.
- (c) Respondent denies the allegations contained in Paragraph 17(c) of the Complaint.
- (d) Respondent denies the allegations contained in Paragraph 17(d) of the Complaint.
- 18(a) Respondent denies the allegations contained in Paragraph 18(a) of the Complaint.

- (b) Respondent denies the allegations contained in Paragraph 18(b) of the Complaint.
- (c) Respondent denies the allegations contained in Paragraph 18(c) of the Complaint.
- 19(a) Respondent denies the allegations contained in Paragraph 19(a) of the Complaint.
- (b) Respondent denies the allegations contained in Paragraph 19(b) of the Complaint.
- 20. Respondent denies the allegations contained in Paragraph 20 of the Complaint.
- 21. Respondent denies the allegations contained in Paragraph 21 of the Complaint.
- 22. Respondent denies the allegations contained in Paragraph 22 of the Complaint.
- 23. Respondent denies the allegations contained in Paragraph 23 of the Complaint.
- 24. Respondent denies the allegations contained in Paragraph 24 of the Complaint.
- 25. Respondent denies the allegations contained in Paragraph 25 of the Complaint.
- 26. Respondent denies the allegations contained in Paragraph 26 of the Complaint.
- 27. Respondent denies the allegations contained in Paragraph 27 of the Complaint, labeled as Paragraph 25.
- 28. Respondent denies each and every allegation contained in the Complaint not specifically admitted herein.
- 29. Respondent denies that the General Counsel or Charging Party are entitled to any of the relief they seek in the Complaint.

#### **SECOND DEFENSE**

At all material times, Respondent has acted in good faith and in compliance with the Act.

#### **THIRD DEFENSE**

The Complaint fails to state a claim upon which relief can be granted.

#### **FOURTH DEFENSE**

The claims are barred by the doctrines of laches, waiver and unclean hands.

#### **FIFTH DEFENSE**

Respondent complied with and satisfied any contractual and/or statutory obligations it may have had concerning any of the subjects referenced in the Complaint.

#### **SIXTH DEFENSE**

The violations alleged in the Complaint are insufficient to state a violation of the Act.

#### **SEVENTH DEFENSE**

The violations alleged in the Complaint are time-barred under Section 10(b) of the Act.

#### **EIGHTH DEFENSE**

Even assuming for the sake of argument that any allegation in the Complaint was found to be in violation of the Act, such conduct would be too minor, isolated or *de minimis* to warrant the finding of an unfair labor practice or the issuance of a remedial order that would further the purposes of the Act.

WHEREFORE, having answered, Respondent prays that the Complaint be dismissed in its entirety with prejudice.

Dated: October 15, 2009

LITTLER MENDELSON  
A Professional Corporation

By: 

H. Tor Christensen  
1150 17<sup>th</sup> Street, NW, Suite 900  
Washington, DC 20036  
(202) 842-3400 Telephone  
(202) 842-0011 Facsimile

Attorneys for MV Transportation, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of October, 2009, a copy of the foregoing Answer was served by first-class U.S. mail, postage prepaid, upon:

George Kirschenbaum, Esq.  
Cary Kane, LLP  
1350 Broadway, Suite 815  
New York, NY 10018

Richard Brook, Esq.  
Meyer, Suozzi, English & Klein, P.C.  
1350 Broadway  
New York, NY 10018

John D. Russell  
667 Quincy Avenue  
Staten Island, NY 10305

Eric Baumwoll  
63 Ebony Street  
Staten Island, NY 10306

  
\_\_\_\_\_  
H. Tor Christensen

# EXHIBIT D



**United States Government**

**NATIONAL LABOR RELATIONS BOARD**

**Region 29**

**Two MetroTech Center, 5th Floor  
Brooklyn, New York 11201-4201**

October 22, 2009

John D. Russell  
667 Quincy Ave.  
Staten Island, NY 10305

MV Public Transportation, Inc.  
Attn. Quinto Rappacioli  
1963 Richmond Terrace  
Staten Island, NY 10302

H. Tor Christensen, Esq.  
Littler Mendelson, P.C.  
1150 17<sup>th</sup> St. N.W., Ste. 900  
Washington, D.C. 20036

Local 707, Intl. Broth. of Teamsters  
14 Front St., 3<sup>rd</sup> Fl.  
Hempstead, NY 11550

George Kirschenbaum, Esq.  
Cary Kane LLP  
1350 Broadway, Ste. 815  
New York, NY 10018

RE: MV Public Transportation, Inc.  
Case No. 29-UD-298

Dear Sirs:

A petition was filed on October 9, 2009, by employee John Russell, seeking an election under Section 9(e)(1) of the National Labor Relations Act, to determine whether certain of the employees of MV Public Transportation, Inc. ("the Employer") wish to withdraw the authority of the incumbent union, Local 707, International Brotherhood of Teamsters ("Local 707") to require, under its agreement with the Employer, that employees make certain payments to the union in order to retain their jobs.

For the reasons described below in more detail, I conclude that it is appropriate to proceed to a deauthorization election at this time.

**Facts**

The Region's investigation revealed that the Employer is engaged in providing paratransit services in multiple locations. In early September 2008, it executed a contract with the City of New York to provide paratransit services in Staten Island, and started

hiring employees for that purpose. On or about September 12, 2008, the Employer recognized Local 707 as the collective bargaining representative of its drivers. On or about December 12, 2008, the Employer and Local 707 entered into a collective bargaining agreement covering a unit of drivers and other classifications. Since then, the Employer and Local 707 have enforced the contract's union security clause.

On various dates in 2009, several unfair labor practices and representation petitions were filed by multiple parties. Those cases will not be described in detail here but, for present purposes, the following should be noted. On July 14, 2009, Local 1181, Amalgamated Transit Union, AFL-CIO ("Local 1181") filed a petition in Case No. 29-RC-11781, seeking to represent the same unit of employees hired by the Employer for the Staten Island contract. On September 30, 2009, the undersigned Regional Director issued a Consolidated Complaint in Case Nos. 29-CA-29530 *et al.* alleging, *inter alia*, that the Employer prematurely recognized Local 707 as employees' bargaining representative in September 2008, when the Employer did not yet employ a representative segment of its ultimate employee complement, and was not yet engaged in its normal operations under the Staten Island contract. The Consolidated Complaint alleges therefore that the Employer's recognition of Local 707 and its enforcement of the contractual union security clause violated Sections 8(a)(2) and (3) of the Act; and that Local 707's acceptance of recognition and dues payments violated Sections 8(b)(1)(A) and 8(b)(2) of the Act. A hearing before an administrative law judge is currently scheduled for December 8, 2009.

On October 9, 2009, employee John Russell filed two petitions: a decertification petition in Case No. 29-RD-1137, and the instant deauthorization petition, Case No. 29-UD-298. There is no dispute that Russell's decertification petition and Local 1181's petition in Case No. 29-RC-11781, are "blocked" pending resolution of the unfair labor practice cases described above. The specific issue presented in the instant UD case is whether, under these circumstances, a deauthorization election may be conducted independently of the other cases at this time.

The Employer and Local 707 both argue that the instant UD case should be held in abeyance until the pending unfair labor practice charges are resolved, under the Agency's "blocking charge" policy.

### **Discussion**

Congress passed Section 9(e)(1) of the Act in 1951 to give employees who are covered by a contractual union security clause a chance to rescind or deauthorize the incumbent union's authority to enforce the clause. Since then, the Board has consistently held that Congress sought to give employees a statutory right to a *timely* deauthorization election with *immediate* results. For example, in Great Atlantic & Pacific Tea Co., 100 NLRB 1494 (1952), the Board rejected an incumbent union's argument that a deauthorization vote should not go into effect until the end of the relevant contract term. The Board stated that, to protect an unwilling majority's important statutory "safeguard,"

an affirmative deauthorization vote “immediately” revokes the union-security clause’s effect. It should be noted that, for similar reasons, the normal “contract bar” principles do not apply to deauthorization petitions.

Andor Co., Inc., 119 NLRB 925 (1957), has particular relevance to the issue herein. In that case, the existing collective bargaining agreement compelled employees to pay dues and “assessments” as a condition of their continued employment. An employee filed a deauthorization petition, but did not file an unfair labor practice charge. The Board’s decision noted that the contract’s assessments requirement clearly ran afoul of Section 8(a)(3)’s proviso allowing enforcement of a union security clause *only* if the employee failed to pay “periodic dues and initiation fees uniformly required,” not assessments (emphasis added). In holding that the possible unlawfulness of a union security clause does not prevent a deauthorization election from proceeding, the Board especially emphasized the importance of a timely election:

[W]e are of the opinion that the Congress [in enacting Section 9(e)(1)] ... was determined that a safety valve should exist whereby the employees might rid themselves of union-security provisions which they no longer desired. To refuse to entertain and process a deauthorization petition aimed at the removal of an unlawful union-security agreement would subject the employees to continued restraint and coercion until such time as appropriate charges could be filed, processed, and adjudicated. Such a time-consuming procedure might effectively destroy the statutory right of employees to eliminate union-security agreements disapproved by a majority of the employees, and would be at war with the entire scheme and purpose of the Act.

*Id.* 119 NLRB at 926.

More recently, in Covenant Aviation Security, LLC, 349 NLRB 699 (2007), the Board cited approvingly both the Great Atlantic & Pacific Tea and Andor Co. cases, *supra*. Although Covenant Aviation involved a showing of interest issue not relevant herein, the Board emphasized that “a *timely* effectuation of employee free choice [is] essential.” (emphasis in original). Covenant Aviation, 349 NLRB at 702.<sup>1</sup>

In this case, there is no dispute that the parties’ collective bargaining agreement contains a union security clause which is being enforced, and which the undersigned alleges to be unlawful in the unfair labor practice charges described above. Furthermore, there is no dispute that Russell’s decertification petition (Case No. 29-RD-1137), as well as Local 1181’s petition (Case No. 29-RC-11781), are “blocked” pending resolution of those charges. The only question herein is whether the instant deauthorization petition must likewise be blocked, or whether an election may proceed independently at this time.

---

<sup>1</sup> After the Board’s decision in Covenant Aviation, the incumbent union filed a motion for preliminary injunction, seeking to enjoin the Agency from conducting a deauthorization election, but its motion was denied. 2007 WL 1880373 (N.D. Cal. 2007).

Based on the foregoing, I conclude that employees should not be forced to wait until resolution of the unfair labor practice cases to proceed to a deauthorization election. As stated above, Congress gave employees a clear statutory right to determine whether to authorize their contractual requirement to pay union dues as a condition of their employment. As the Board stated in Andor, supra, Section 9(e)(1) is an important “safety valve” allowing an unwilling majority to rid themselves of an undesired union security provision, whether legal or not. And, in my view, it must be afforded to employees immediately, rather than waiting for the lengthy litigation challenging the underlying collective bargaining relationship and the contract itself.

Finally, although the parties refer to the Agency’s “blocking” policy, they fail to address an important difference between representation elections (RD and RC) and deauthorization elections. Specifically, if employees succeed in deauthorizing Local 707 from compelling dues as a condition of their employment, it voids the union security clause, but it does not change the employees’ representation status. Employees would still be represented by Local 707 and governed by the collective bargaining agreement, until such time as its lawfulness is determined. In that sense, the alleged unlawful conduct that would interfere with employees’ choice in a representation election is not “inherently inconsistent” with the UD petition, for the UD petition asks a different question. Thus, the UD petition does not raise a question concerning representation, and the normal blocking policy does not apply. Furthermore, if the General Counsel ultimately prevails in the unfair labor practice cases, then to block the deauthorization election now would continue to coerce employees and to improperly benefit the wrongdoers in the intervening time period.

## **Conclusion**

Accordingly, pursuant to Section 9(e)(1) of the National Labor Relations Act, and Section 102.85 of the Board’s Rules and Regulations, an election by secret ballot will be conducted as provided in the notice of election to be issued shortly.<sup>2</sup>

---

<sup>2</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the undersigned within seven days of the date of this letter directing an election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, Two MetroTech Center, 5<sup>th</sup> Floor, Brooklyn, NY 11201, on or before **October 29, 2009**. No extension of time to file this list may be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall, or by department, etc.).

Additional copies of the notice of election will be furnished to the Employer for posting in conspicuous places throughout the plant. Your attention is directed to Section 103.20 of the Board's Rules and Regulations, which provides that the Employer must post the Board's official Notice of Election at least three (3) full working days before the date of the election, excluding Saturdays, Sundays and holidays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

If you have any questions, please contact Board Agent Nancy Lipin at (718) 330-7705.

Your cooperation is appreciated.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Al Blyer".

Alvin Blyer  
Regional Director

Enclosures

# EXHIBIT E



United States Government

NATIONAL LABOR RELATIONS BOARD  
Region 29  
Two Tech Center North  
Brooklyn, New York 11201  
(718-330-7713)

November 2, 2009

Via Facsimile/(202) 842-0011

H. Tor Christensen, Esq.  
Littler Mendelson, P.C.  
1150 17<sup>th</sup> Street, N.W., Ste. 900  
Washington, D.C. 20036

Re: MV Public Transportation, Inc.  
Case No. 29-UD-298

Dear Mr. Christensen:

I have received your letter on behalf of MV Public Transportation, Inc., herein called the Employer, requesting that I reconsider my decision to conduct a deauthorization election in the above-referenced matter because a Complaint has issued on certain unfair labor practice charges in Case Nos. 29-CA-29530, 29-CA-29760, 29-CA-29544, 29-CA-29619 and 29-CB-13981. In support of your argument, you rely upon Parks Food Service, 235 NLRB 1410 (1978), and contend that the Board's decision there has clear relevance to the present matter. I do not agree. In my view, the decision in Parks Food Service is inapposite to the facts at issue here, and for the reasons set forth below, I find that holding the UD election at this time is proper.

In Parks Food Service, an employer and union were parties to a collective bargaining agreement containing a union security clause. A UD petition was filed, and two weeks later, the employer posted a notice to its employees which stated, in effect, that it would not enforce the union security clause in the parties' collective bargaining agreement until the UD election was held. A complaint issued alleging that the employer's repudiation of the union security clause constituted a violation of Section 8(a)(5) of the Act. Thereafter, upon Board approval, the Regional Director conducted the UD election, and the employees voted to withdraw the union's authority to require employees to become union members as a condition of employment. The union filed objections to the election, arguing that the employer's announced repudiation of the union security clause prevented a fair election from being conducted. The Board reversed the Regional Director's decision to overrule the objection, and found that the UD election should not have been held, inasmuch as the employer's conduct prevented employees from making a free and untrammelled choice as to whether to retain the clause. Id. at 1411. The Board did not hold that, as a general rule, UD elections should be held in abeyance where complaints have issued, or there are pending unfair labor practice charges, nor did it extend the holding in Parks Food Service to any other set of facts.

The facts at issue in the instant case are clearly distinguishable from those in Parks. Here, the unfair labor practices alleged in the Complaint would only serve to *benefit* the incumbent union, Local 707, International Brotherhood of Teamsters (Local 707). They are not of the type at issue in Parks, where the employer engaged in conduct which could undercut the union's support and thereby interfere with the employees' ability to make a free and fair choice in the election. Rather, in the cases pending here, the Complaint alleges that the Employer has unlawfully recognized Local 707 and provided it with unlawful *support*. There is no conduct at issue in the Complaint which would be detrimental to Local 707's status as the employees' collective bargaining representative. Further, the unfair labor practice at issue in Parks went to the heart of the choice which the employees were being asked to make in the UD election -- whether the union security clause should remain in effect. Prior to the election, the employer in Parks made that choice for them by unilaterally rescinding the clause.

It is my view that the decision in Parks does not sanction an employer's ability to delay a UD election, or otherwise gain an advantage by virtue of its own allegedly unlawful conduct. Holding the instant UD petition in abeyance as you suggest would achieve precisely that result.

Accordingly, I conclude that it is appropriate to proceed to the deauthorization election on November 12, 2009, and your request for reconsideration is denied.

Very truly yours,

  
Alvin Blyer  
Regional Director

cc:  
George Kirschenbaum, Esq.  
Cary Kane LLP  
1350 Broadway, Suite 815  
New York, NY 10018  
(Via Fax/212-868-6302)

John Russell  
667 Quincy Avenue  
Staten Island, New York 10305